



SACHI A. HAMAI
EXECUTIVE OFFICER

COUNTY OF LOS ANGELES BOARD OF SUPERVISORS

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 383
LOS ANGELES, CALIFORNIA 90012
(213) 974-1411 • FAX (213) 620-0636

MEMBERS OF THE BOARD

GLORIA MOLINA
MARK RIDLEY-THOMAS
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

October 28, 2014

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

13 October 28, 2014

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

**APPROVE THE RECOMMENDATION OF THE HEARING OFFICER REGARDING THE PETITION
TO RESCIND THE SALE OF TAX-DEFAULTED PARCEL ASSESSOR IDENTIFICATION NUMBER
(AIN) 5592-011-008**

SUBJECT

The above-referenced parcel of real property was sold at the 2012A Public Auction of Tax Defaulted Property held on October 22, 2012, by the County Treasurer and Tax Collector (TTC). Subsequently, an attorney for the prior owner petitioned your Board to request that the sale be rescinded.

Pursuant to California Revenue and Taxation (R&T) Code section 3731, a hearing was scheduled on December 4, 2013, before the appointed Hearing Officer. A second hearing for the property was held on April 30, 2014, after a second petition was filed by a previous lienholder. A third and final hearing was held on August 20, 2014 at the request of County Counsel, representing TTC.

IT IS RECOMMENDED THAT THE BOARD:

1. Approve the recommendation in the attached report from the Hearing Officer to rescind the sale of AIN 5592-011-008.
2. Instruct the Executive Officer to notify the Assessor and the other parties to the sale that the sale will be rescinded and the purchase price refunded to the purchaser of the parcel.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approving the recommendation of the Hearing Officer in this matter keeps the County in compliance with the relevant sections of the R&T Code.

Implementation of Strategic Plan Goals

The recommendations are consistent with the principles of County Strategic Plan Goal No. 1 (Operational Effectiveness), by providing the petitioners seeking to rescind tax sales with an Executive Officer-appointed Hearing Officer; and Goal No. 4 (Fiscal Sustainability), by avoiding unnecessary and potentially costly legal proceedings.

FISCAL IMPACT/FINANCING

The fiscal impact resulting from the approval of the Hearing Officer's recommendation will require the County to:

1. Return the subject parcel to the owner of record at the time of the 2012A Tax Sale.
2. Refund the purchaser in the amount of \$181,009.50, plus interest in the amount of \$2,268.71, for a total of \$183,278.21.

The interest amount is a net county cost and is calculated based on the County pool apportioned rate for the time period starting on the date of the purchase and ending on the date of the rescission recordation as specified in R&TC sections 3731(c) and 5151.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

California Revenue and Taxation Code section 3725 provides for a proceeding based on alleged invalidity or irregularity of any proceedings instituted under the chapters governing sale of tax-defaulted property.

The request referenced in this letter meets the statutory guidelines and accordingly required that the Board of Supervisors conduct, or cause to be conducted through an appointed Hearing Officer, a hearing on the matter.

The hearings having been conducted, and a recommendation from the Hearing Officer received, your Board is now required to accept or reject the recommendation

IMPACT ON CURRENT SERVICES (OR PROJECTS)

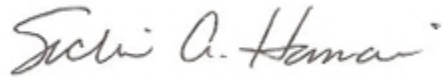
No impact.

The Honorable Board of Supervisors

10/28/2014

Page 3

Respectfully submitted,

A handwritten signature in cursive script, reading "Sachi A. Hamai".

SACHI A. HAMAI

Executive Officer, Board of Supervisors

SAH:po

Enclosures

c: Chief Executive Officer
County Counsel
Assessor
Auditor-Controller
Treasurer and Tax Collector



SACHI A. HAMAI
EXECUTIVE OFFICER

COUNTY OF LOS ANGELES BOARD OF SUPERVISORS

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 383
LOS ANGELES, CALIFORNIA 90012
(213) 974-1411 • FAX (213) 620-0636

MEMBERS OF THE BOARD

GLORIA MOLINA
MARK RIDLEY-THOMAS
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

September 26, 2014

Sachi A. Hamai, Executive Officer
County of Los Angeles, Board of Supervisors
500 W. Temple Street
Los Angeles, CA 90012

Dear Ms. Hamai:

Re: HEARING FOR PETITION TO RESCIND AIN 5592-011-008

The Treasurer and Tax Collector (TTC) has the power to sell nonresidential commercial property that has been delinquent in taxes for three or more years and residential property that has been delinquent in taxes for five or more years.

The property bearing Assessor's Identification Number (AIN) 5592-011-008, belonging to Dr. Theodric Hendrix, was sold by the TTC at the 2012A County Public Auction on October 22, 2012 to Armen Chobanyan. Subsequently, on October 3, 2013, Mr. Beryl Weiner, attorney for Dr. Hendrix, filed a petition with the Executive Office of the Board of Supervisors to request a rescission of the sale of AIN 5592-011-008, which is a parcel located on Prestwick Drive in Los Angeles, California (Attachment "A").

Pursuant to Revenue and Taxation (R&T) Code section 3731(b), on December 4, 2013, I served as Hearing Officer to hear arguments for and against rescission of the tax sale of AIN 5592-011-008 on behalf of the Board of Supervisors. I reviewed the brief and supporting documents submitted by Sayuj Panicker, County Counsel representing the TTC (Attachment "B"). During the Hearing, I heard testimony from Mr. Weiner; Dr. Hendrix; Armen Dovlatian, attorney for the purchaser, Mr. Chobanyan; and Mr. Panicker. Also present at the hearing were LaTayvius Alberty, County Counsel representing the Board of Supervisors, and Ken Press and Kathy Gloster, TTC staff.

At that hearing, Mr. Weiner contended that AIN 5592-011-008 should not have been sold for several reasons. First, Mr. Weiner argued that Dr. Hendrix did not receive proper notice of the proposed sale. Mr. Panicker, speaking for the TTC, clarified that notices were mailed to the last known mailing address for Dr. Hendrix on record with the Assessor's Office. In addition, the TTC mailed notices to five other addresses listed for Dr. Hendrix (Attachment "B"). Mr. Panicker further stated R&T Code section 3701 provides that "the validity of any sale under this chapter shall not be affected . . . if a party of interest does not receive the mailed notice." As the TTC mailed such notice to Dr. Hendrix at his last known mailing addresses, proper notice was provided to Dr. Hendrix.

Next, Mr. Weiner argued that the AIN 5592-011-008 property is contiguous and integrated with another property that serves as his client's primary residence and should not have been sold because it has always been used as the yard for the residence. He referenced pictures showing a continuous wall surrounding the joined properties. Mr. Weiner stated that the deed covers both parcels and taxes were impounded with the lienholder, Washington Mutual Bank (WaMu), and paid as a single property.

Mr. Weiner then stated that the property was sold below the market value, which resulted in a windfall for the purchaser. Mr. Dovlatian disagreed, and stated that the value of the property is the price it was sold for and implied the County would benefit from the transaction because the taxes were small in comparison to the purchase price. Ms. Gloster explained that when property is sold at auction, the County only retains the outstanding taxes and the costs of the sale. Any residual funds are considered excess proceeds and may be claimed and then distributed in order of priority to any party of interest filing a claim.

Next, there was discussion about notices that were provided to the lienholder, WaMu. Pursuant to R&T Code section 3701, proper notice must be sent to all parties of interest, including the lienholder. Ms. Gloster stated that notice was not provided to Chase, and notices were only sent to then-defunct WaMu, after it was commonly known that WaMu was defunct and that JP Morgan Chase Bank (Chase) had acquired responsibility of WaMu's loans. Further, Mr. Panicker indicated that Dr. Hendrix's property was secured by a deed of trust held by WaMu. As lienholder, WaMu was a party of interest and was entitled to receive notice of the tax sale. He stated it would have been reasonable for the TTC to investigate and determine that Chase had acquired all loans and loan commitments of WaMu after WaMu became defunct (Attachment "B").

Mr. Panicker concluded by stating that since the TTC did not determine that Chase had acquired all loans and loan commitments of WaMu, and only mailed the notice of auction to WaMu, notice under R&T Code section 3701 was defective. In his brief dated December 4, 2013, Mr. Panicker states "In 2009 [sic], WaMu became defunct, and had been subsequently acquired by JP Morgan Chase Bank. Because WaMu was defunct, it would have been reasonable for the TTC to further investigate which entity was assigned to the deed of trust, and mail the notice of auction to that entity, as well. The TTC, however, did not do that. . ." The letter further states that "[b]ecause the TTC did not make reasonable efforts to search the last known mailing address of another party of interest, WaMu [sic], the TTC agrees with the petitioner that the sale of the parcel be rescinded" (Attachment "B").

Mr. Dovlatian stated that Chase had a contractual relationship to assume responsibility when WaMu went defunct, and Chase should have paid the impound taxes. He further stated that the property was legitimately sold since Chase did not pay the taxes and that neither the TTC nor Dr. Hendrix could assert a notice issue on behalf of Chase. He went on to say that Dr. Hendrix should pursue a claim with Chase and not penalize a purchaser who did his due diligence to buy property at public auction.

Following the December 2013 Hearing noted above, the TTC provided notice to Chase. Chase then petitioned for a hearing on January 10, 2014, pursuant to R&T Code section 3701 (Attachment "C"). A second Hearing was held on April 30, 2014, at which I served as Hearing Officer. Prior to the Hearing, I reviewed the brief and supporting documents submitted for the December Hearing, as well as additional briefs and supporting documents provided by Ms. Gates and Mr. Dovlatian. Present at this Hearing were Nicole Gates, representing Chase; Mr. Weiner; Dr. Hendrix; Mr. Dovlatian; Mr. Chobanyan; Mr. Panicker; Mr. Press, Ms. Gloster, and Sergio Marquez, from the TTC. Also present at the hearing was Emily Issa, County Counsel representing the Board of Supervisors.

Ms. Gates argued the deed covers both parcels and taxes were impounded with the lienholder, WaMu, and paid as a single property. She stated that it was widely known that Chase had acquired responsibility for WaMu's assets and, as the subsequent lienholder, Chase should have been provided notice of the delinquent taxes prior to the auction of the property. Since the TTC failed to provide Chase with notice of the sale as required by R&T Code section 3701, Ms. Gates stated that the sale of AIN 5592-011-008 should be rescinded (Attachment "D"). Mr. Dovlatian disagreed and stated that since the TTC mailed one copy of a notice to WaMu, at an address currently occupied by Chase, it means that Chase was provided with notice of the sale (Attachments "E" and "F").

Mr. Panicker stated that notice mailed to the incorrect party, WaMu, does not constitute notice mailed to Chase.

Subsequent to the April Hearing, on June 26, 2014, Mr. Panicker requested a new hearing on behalf of the TTC to determine whether Chase had proven that it was a party of interest and whether notices were properly sent to Chase (Attachment "G"). This request was granted and the Hearing was scheduled for August 20, 2014. I reviewed the record prior to this Hearing, including briefs and supporting documents provided for the December and April Hearings, as well as briefs and supporting documents provided by Ms. Gates, Mr. Panicker and Mr. Dovlatian. Present at this third Hearing were Ms. Gates; Mr. Weiner; Dr. Hendrix; Mr. Dovlatian; Mr. Chobanyan; Mr. Panicker; Mr. Press; Ms. Gloster; Mr. Marquez; and the TTC, Mark Saladino. Also present at the hearing were Ms. Issa and Ms. Alberty, County Counsel representing the Board of Supervisors.

Mr. Panicker began with stating he wanted Chase to establish a full and complete record of the link between Chase and *this* property, and what Chase's procedures were with respect to mail received which is addressed to WaMu.

Chase's Standing

To establish Chase's standing as a party of interest and demonstrate a link between Chase and this property, Ms. Gates referenced an Affidavit of Federal Deposit Insurance Corporation (FDIC) dated October 2, 2008 that reflects Chase acquired certain assets, including all loans and all loan commitments of WaMu on September 25, 2008, when WaMu was closed by the Office of Thrift Supervision and the FDIC was named receiver (Attachment "H").

Ms. Gates stated that Chase is clearly a party of interest as defined in R&T Code section 4675. Ms. Gates also referenced the Corporate Assignment of Deed of Trust between WaMu and Chase, making Chase an assignee to the subject property. She cited *Fjaeran v. Bd. of Supervisors* (210 Cal.App.3d 434, 440) which held "that for the purpose of an excess proceeds claim under Section 4675 an assignee was considered a party of interest as she had an enforceable assignment of a judgment lien 'regardless of whether the assignment has been recorded or filed'" (Attachment "H").

She further argued that the defunct status of WaMu was public knowledge, widely known and gave notice to the TTC that WaMu was no longer a party of interest, but that Chase was the party of interest. Mr. Weiner stated that the TTC could have easily determined who had assumed responsibility for the liens held by WaMu when it went defunct by making a phone call to WaMu.

Proper Notice

Revenue and Tax Code section 3701 requires the TTC to send notice of the proposed sale to parties of interest, which includes the title holder of record and the lienholder of record. Ms. Gates argued that Chase did not receive proper notice pursuant to R&T Code section 3701 because the TTC addressed a notice to WaMu and sent it to 400 E. Main Street, Stockton, California. Under R&T Code section 3701, the TTC is required to make a reasonable effort to provide notice. In this case, the TTC made no effort to locate Chase, but only sent notice to WaMu, which the TTC knew was defunct (Attachment "H").

Ms. Gates cited the case of *Mayer v. L&B Real Estate*, 43 Cal. 4th 1231 (2008) in which the California Supreme Court held that notice sent to an incorrect *addressee* is not sufficient notice even if it was sent to the correct address and opened. In this case, the TTC sent a notice of auction addressed to *WaMu*, at an address formerly occupied by WaMu. Since the letter was admittedly addressed to WaMu, the TTC gave no notice to Chase, even though the letter was mailed to a location currently occupied by Chase. Ms. Gates argued the letter, addressed to WaMu, signed for by a security guard who was neither a WaMu nor a Chase employee, is not sufficient notice to Chase (Attachment "H").

Mr. Dovlatian said that the TTC would not have known if Chase had subsequently sold the loan and was no longer a party of interest. He further argued that the notice was sent to a property owned by Chase (400 E. Main Street, Stockton), which means the security guard who had signed for the notice addressed to WaMu was an agent of Chase (Attachment "I"). Ms. Gates reiterated that the TTC had an obligation to make a reasonable effort to determine who held the lien and argued that notice sent to WaMu at the address of a Chase branch did not constitute effective notice.

Recommendation

Standing

Chase is a party of interest because it acquired certain assets, including all loans and all loan commitments of WaMu, the lienholder of record on the subject property, as an assignee. R&T Code section 4675 lists parties of interest, including "lienholders of record prior to the recordation of the tax deed to the purchaser." On September 25, 2008, WaMu's interest as the lienholder of the subject property was assigned to Chase as memorialized in the Corporate Assignment of Deed of Trust between WaMu and Chase. California Civil Code section 2934 states that "any assignment of a mortgage and any assignment of the beneficial interest under a deed of trust *may* be recorded . . ." however, an assignment is not required to be recorded to be valid. When WaMu went defunct, Chase became the assignee of the deed of trust related to the subject property. The Court in *Fjaeran* found that "the assignment is enforceable against third parties regardless of whether the assignment has been recorded or filed." Therefore, when WaMu went defunct, Chase acquired this loan via assignment on September 25, 2008, making Chase a party of interest in this matter. This is true whether or not the assignment was recorded, as assignments are not required to be recorded under law.

WaMu was the lienholder of record, and by assignment, Chase became the successor to WaMu's status as lienholder of record, therefore Chase, as lienholder of record, is a party of interest.

Notice

The TTC is required by R&T Code section 3701 to send proper notice of the proposed sale to all parties of interest which includes the property owner and the lienholder.

When Chase acquired WaMu's assets and liabilities after it became defunct, Chase became the lienholder of the parcel in question and is therefore a party of interest. R&T Code section 3701 requires the TTC to make a *reasonable* effort to obtain the name and last known mailing address of parties of interest. In this instance, it was widely known that WaMu went defunct and that Chase acquired many of WaMu's assets, including loans. However, the TTC admitted they did not make *any* effort to determine the name of the lienholder of this property, prior to the auction, even though the TTC admitted knowing that WaMu went defunct in 2008.

Rather, the TTC addressed notices to WaMu and sent them to 400 E. Main Street, Stockton. While this is an address currently occupied by Chase, notice was not proper because any mail sent by the TTC was admittedly addressed to WaMu only. In *Mayer*, the California Supreme Court held that notice sent to an incorrect *addressee* is not sufficient notice, even if it was sent to the correct address. Therefore, Chase's procedures regarding handling mail addressed to WaMu are irrelevant.

Since the TTC only mailed notices of the auction to the WaMu addresses listed on the deed of trust, and the lienholder, Chase, never received any notice of the upcoming auction, the notice was defective pursuant to R&T Code section 3701. Therefore, AIN 5592-011-008 should not have been sold at the 2012A County Public Auction on October 22, 2012.

Ms. Sachi A. Hamai, Executive Officer
September 26, 2014
Page 6 of 6

Conclusion

For the reasons listed above, I recommend the sale of AIN 5592-011-008 be rescinded.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Sharon Ryzak", with a long horizontal flourish extending to the right.

Sharon Ryzak
Hearing Officer

(Attachments will be provided upon request.)